

# Morgan Lewis

## John McGahren

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November 20, 2019

### **VIA ECF**

The Honorable Audrey G. Fleissig  
U.S. District Court  
Eastern District of Missouri  
111 S. 10th Street  
Suite 12.182  
St. Louis, MO 63101

Re: McClurg, et al. v. Mallinckrodt, LLC, et al., Case No. 4:12-cv-00361-AGF

Dear Judge Fleissig:

We write to advise the Court that, to date, TorHoerman Law ("TorHoerman"), Plaintiffs' counsel, has not paid the amount still owed to Morgan, Lewis & Bockius LLP ("Morgan Lewis"), counsel for Cotter Corporation (N.S.L.) ("Cotter"), and Shook, Hardy & Bacon LLP ("Shook Hardy"), counsel for Mallinckrodt, LLC ("Mallinckrodt") for certain Marker Group costs, and is therefore in violation of this Court's Order.

On May 2, 2017, this Court ordered that, "with respect to records of Plaintiffs not addressed in the Court's December 9, 2016 Memorandum and Order granting in part Defendants' motion for a protective order...Plaintiffs shall continue to comply with their obligation to produce records in their possession **and shall pay 25% of the costs incurred in collecting and maintaining additional records of Plaintiffs through third-party vendor Marker Group...**"<sup>1</sup> See Dkt. 557 (emphasis added). This Court allowed for reconsideration "if the parties demonstrate this allocation is unreasonable or that an offset or credit is appropriate for records already collected and produced by Plaintiffs." *Id.* To our knowledge, Plaintiffs never demonstrated this allocation of costs was unreasonable, nor did they demonstrate that an offset or credit would be appropriate.

Following the Court's May 2017 Order, Plaintiffs' counsel received bills for the Marker Group invoices from June of 2017 through August of 2018. Marker Group stopped sending invoices to the parties in August of 2018 because this is when record collection activity ceased. Marker Group has informed us that TorHoerman paid \$11,585.19 for records collected prior to November 30, 2016. However, TorHoerman does still owe Marker Group costs to both Morgan Lewis and Shook Hardy

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<sup>1</sup> The Court's December 9, 2016 Memorandum and Order referenced discusses a separate percentage (specifically, 18%). However, this was for a prior refund to Cotter and Mallinckrodt that Plaintiffs already paid. What is outstanding is the 25%, which Plaintiffs still owe.

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for the time period of December 1, 2016 through May 31, 2017. Pursuant to the Court's May 2017 Order, both firms are owed 25% of the Marker Group costs for that timeframe.

On October 8, 2019, a phone call took place with Randi Ellis and Your Honor that TorHoerman, Morgan Lewis, and Shook Hardy all participated in. The Marker Group invoices were discussed during this call, and TorHoerman asked for two weeks to get back to Morgan Lewis and Shook Hardy regarding the outstanding invoices. To date, we have not heard back from TorHoerman about the Marker Group costs.

Marker Group, at our request, has put together a cost package covering the time period of December 1, 2016 through May 31, 2017. They calculated that Shook Hardy is owed **\$52,154.76** and Morgan Lewis is owed **\$48,218.76**, totaling **\$100,373.53**.

As you know, a settlement has been reached in this case and the settlement agreements for these plaintiffs have been executed by the parties. We are looking to wrap this matter up, but cannot do so until the outstanding Marker Group costs are addressed and paid. We would appreciate your assistance in resolving this matter.

Sincerely,

/s/ John McGahren  
John McGahren

JM/bmd

cc: Randi Ellis